

Christopher Kim (Bar No. 082080)
christopher.kim@limruger.com
Lisa J. Yang (Bar No. 208971)
lisa.yang@limruger.com
LIM, RUGER & KIM, LLP
1055 West Seventh Street, Suite 280
Los Angeles, California 90017-2554
Telephone: (213) 955-9500
Facsimile: (213) 955-9511

Thomas A. Dubbs (*Pro Hac Vice*)
tdubbs@labaton.com
James W. Johnson (*Pro Hac Vice*)
jjohnson@labaton.com
Richard T. Joffe (*Pro Hac Vice*)
rjoffe@labaton.com
Thomas G. Hoffman, Jr. (*Pro Hac Vice*)
thoffman@labaton.com
LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

Allyn Z. Lite (*Pro Hac Vice*)
alite@litedepalma.com
Bruce D. Greenberg (*Pro Hac Vice*)
bgreenberg@litedepalma.com
Katrina Carroll
kcarroll@litedepalma.com
LITE DEPALMA GREENBERG, LLC
Two Gateway Center, 12th Floor
Newark, New Jersey 07102
Telephone: (973) 623-3000
Facsimile: (973) 623-0858

*Attorneys for Lead Plaintiff the State of New Jersey, Department of Treasury,
Division of Investment, Plaintiff International Brotherhood of Electrical Workers,
Local 103 and Norfolk County Retirement System and Lead Counsel for the Class*

Thomas Bienert, Jr.
tbienert@bmkattorneys.com
BIENERT, MILLER & KATZMAN
903 Calle Amanecer, Suite 350
San Clemente, CA 92673
Telephone: (949) 369-3700
Facsimile: (949) 369-3701

Robert S. Green
rsg@classcounsel.com
GREEN & NOBLIN, P.C.
700 Larkspur Landing Circle, Suite 275
Larkspur, CA 94939
Telephone: (415) 477-6700
Facsimile: (415) 477-6710

Attorneys for Plaintiff Mark V. Ripperda

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

IN RE STEC, INC.
SECURITIES LITIGATION

No. SACV 09-01304-JVS (MLGx)

This Document Relates to
ALL ACTIONS.

**SUPPLEMENTAL
DECLARATION OF
THOMAS A. DUBBS**

1 THOMAS A. DUBBS declares as follows pursuant to 28 U.S.C. § 1746:

2 1. I am an attorney at law licensed to practice before the Courts of the
3 State of New York and am admitted *pro hac vice* to practice before this Court in
4 the above-captioned matter. I am a member of Labaton Sucharow LLP, Co-Lead
5 Counsel for Court-appointed Lead Plaintiff, the State of New Jersey, Department
6 of Treasury, Division of Investment (“New Jersey”). I make this Declaration
7 based on my personal knowledge.

8 **I. Background**

9 2. As alleged in the Third Consolidated Amended Complaint for
10 Violation of the Federal Securities Laws (the “TAC”), Defendant STEC, Inc.
11 (“STEC” or the “Company”) manufactures data storage devices, including solid-
12 state drives (“SSDs,” also known as “flash drives”), for computer systems. ¶ 4.¹
13 STEC’s flagship product is the ZeusIOPS, a high-performance SSD. ¶ 5. STEC’s
14 customers include original equipment manufacturers (“OEMs”), such as EMC,
15 IBM, Hitachi, Hewlett-Packard (“HP”), and Sun Microsystems (“Sun”). ¶ 3.

16 3. As alleged in the TAC, Defendants Manouch Moshayedi and
17 Mehrdad (“Mark”) Moshayedi (the “Moshayedi Brothers”) founded STEC, then
18 named Simple Technology, Inc., in 1990. ¶ 27. At the beginning of the Class
19 Period, the Moshayedi Brothers held a combined 45% of the Company’s common
20 stock. ¶ 7.

21 4. As alleged in the TAC, at all relevant times, Defendant Manouch
22 Moshayedi was STEC’s Chief Executive Officer and Chairman of the Board of
23 Directors, ¶ 29; Defendant Mark Moshayedi was STEC’s Chief Operating Officer,
24 Chief Technical Officer, President, and Secretary, as well as a member of its Board
25 of Directors and Equity Awards Committee, ¶ 30; and Defendant Raymond D.

26
27
28 ¹ Unless otherwise indicated, all citations to “¶ __” refer to paragraphs in the TAC.

Cook (“Cook”) was STEC’s Chief Financial Officer and Principal Accounting Officer, ¶ 31.

II. Complaints Filed in this Action

A. The Initial Complaints

5. Beginning on November 6, 2009, several securities fraud class action complaints were filed on behalf of investors who had purchased or otherwise acquired STEC common stock between June 16, 2009 and November 3, 2009. *See Jean v. STEC, Inc.*, No. 8:09-cv-01304-JVS-MLG (C.D. Cal. filed Nov. 6, 2009); *Sakhai v. STEC, Inc.*, No. 8:09-cv-01306-JVS-MLG (C.D. Cal. filed Nov. 6, 2009); *Greenwald v. STEC, Inc.*, No. 8:09-cv-01315-JVS-MLG (C.D. Cal. filed Nov. 9, 2009); *Munter v. STEC, Inc.*, No. 8:09-cv-01320-JVS-MLG (C.D. Cal. filed Nov. 10, 2009); *Fischer v. STEC, Inc.*, No. 2:09-cv-08536-JVS-MLG (C.D. Cal. Nov. filed 19, 2009); *Weinberger v. STEC, Inc.*, No. 8:09-cv-01460-CJC-RNB (C.D. Cal. filed Dec. 11, 2009). On January 21, 2010, the Court issued an Order consolidating the six initial actions under the caption *In re STEC, Inc. Securities Litigation*, No. SACV-09-01304-JVS (MLGx) (the “Action”). ECF 54.

(a) Pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4(a)(3)(A), a notice of pendency was published, advising investors of the deadline to seek appointment as lead plaintiff with respect to a class period between June 16, 2009 and November 3, 2009.

(b) On February 8, 2010, the Court issued an Order appointing two individual STEC investors, Arman Rashtchi (“Rashtchi”) and Keith Ovitt (“Ovitt”), as co-lead plaintiffs and Kahn Swick & Foti, LLC and Bernstein Litowitz Berger & Grossman LLP (“BLBG”) as co-lead counsel. ECF 61.

6. On March 2, 2010, a putative class action was filed on behalf of investors who had purchased or otherwise acquired STEC stock between

1 November 4, 2009 and February 23, 2010.² On March 26, 2010, the Court
2 consolidated that action with the Action. ECF 71.

3 **B. The Consolidated Complaint**

4 7. On April 9, 2010, Rashtchi and Ovitt filed a Consolidated Complaint
5 for Violations of the Federal Securities Laws (the “Consolidated Complaint”),
6 which alleged claims under Sections 10(b) and 20(a) of the Securities Exchange
7 Act of 1934 (the “Exchange Act”) on behalf of investors who purchased or
8 otherwise acquired STEC common stock between June 16, 2009 and February 23,
9 2010 (the “Class Period”). ECF 83. In light of the expanded class period, the
10 Court directed publication of a new notice of pendency and the lead plaintiff
11 process was reopened. ECF 71.

12 8. On May 12, 2010, Defendants moved to dismiss the Consolidated
13 Complaint. ECF 89. On June 11, 2010, Rashtchi and Ovitt opposed the motion,
14 ECF 92, and, on June 28, 2010, Defendants filed a reply, ECF 113. Although the
15 motion was fully briefed, it was never decided because the Court appointed a new
16 lead plaintiff.

17 **C. The Consolidated Amended Complaint**

18 9. On July 14, 2010, the Court issued an Order appointing New Jersey as
19 Lead Plaintiff and approving New Jersey’s choice of Co-Lead and Liaison Counsel
20 to represent the putative class. ECF 123.³

21 10. On August 13, 2010, New Jersey and representative plaintiffs the
22 International Brotherhood of Electrical Workers, Local 103 (“Local 103”) and the
23 Norfolk County Retirement System (“Norfolk County”) (collectively, “Plaintiffs”)

24
25 ² *Meda v. STEC, Inc.*, No. SACV 10-00248 AG (ANx) (C.D. Cal. filed Mar. 2, 2010).

26 ³ The Court denied Ovitt and Rashtchi’s motion pursuant to 28 U.S.C. § 1292(b)
27 for an order certifying the Court’s July 14, 2010 Order for interlocutory appeal.
28 ECF 135. The Ninth Circuit subsequently denied their petition for a writ of
mandamus vacating the Order. *See* ECF 144 (Order, *Rashtchi v. U.S. District Court (Selna)*, No. 10-72711 (9th Cir. filed Sept. 3, 2010)).

1 filed a Consolidated Amended Complaint for Violation of the Federal Securities
 2 Laws (the “CAC”). ECF 131. Plaintiffs alleged claims under Sections 10(b),
 3 20(a), and 20A of the Exchange Act, 15 U.S.C. §§ 78j(b), 78t(a), 78-t1a, and Rule
 4 10b-5 promulgated by the SEC under Section 10, 17 C.F.R. § 240.10b-5 (the
 5 “Exchange Act Claims”), and, as to Defendants’ misrepresentations and omissions
 6 in connection with the Offering, under Sections 11, 12(a)(2), and 15 of the
 7 Securities Act of 1933, 15 U.S.C. §§ 77k, 77l(a)(2), 77o (the “Securities Act” and
 8 the “Securities Act Claims”). *Id.* ¶ 13.

9 (a) Local 103 alleged the Section 20A claim on behalf of all Class
 10 members who purchased STEC common stock contemporaneously with sales by
 11 the Moshayedi Brothers during the Class Period. *Id.* ¶ 18.

12 (b) Norfolk County alleged the Securities Act Claims on behalf of
 13 all Class members who acquired STEC common stock pursuant or traceable to
 14 STEC’s August 2009 secondary offering (the “Offering”). *Id.* ¶ 19. The Securities
 15 Act Claims were alleged against Defendants; Rajat Bahri, a member of STEC’s
 16 Board of Directors and Chair of its Audit Committee, *id.* ¶¶ 31-33; and the four
 17 investment banks that acted as underwriters with respect to the Offering
 18 (collectively, the “Underwriters”): J.P. Morgan Securities Inc. (“J.P. Morgan
 19 Securities”), Deutsche Bank Securities Inc. (“Deutsche Bank Securities”), Barclays
 20 Capital Inc. (“Barclays Capital”), and Oppenheimer & Co. Inc. (“Oppenheimer”).
 21 *Id.* ¶¶ 34-41.

22 11. On January 10, 2011, the Court issued a tentative Order dismissing
 23 the CAC for failure to adequately plead falsity; the parties submitted on the
 24 tentative Order. ECF 177.

25 **D. The Second Amended Complaint**

26 12. On February 22, 2011, Plaintiffs filed a Second Consolidated
 27 Amended Complaint for Violation of the Federal Securities Laws (the “SAC”).
 28 ECF 178.

1 13. On June 17, 2011, the Court granted the Underwriters' motion to
 2 dismiss the Securities Act Claims. ECF 200. The Court found that Plaintiffs had
 3 adequately stated claims for relief under the Securities Act, but that Norfolk
 4 County lacked standing because it did not acquire STEC stock pursuant or
 5 traceable to the Offering. *Id.* at 20-21. In the same Order, the Court sustained the
 6 Exchange Act Claims against Defendants STEC, the Moshayed Brothers, and
 7 Cook. *Id.* at 23.

8 14. On July 17, 2011, the remaining Defendants answered the SAC. ECF
 9 203.

10 **E. The Third Amended Complaint**

11 15. The TAC is filed herewith in connection with Plaintiffs' motion for
 12 preliminary approval of the proposed settlement of the Action (the "Settlement").
 13 The purpose of this amendment is to add plaintiff Dr. Mark V. Ripperda ("Dr.
 14 Ripperda") as a proposed Class Representative. ¶ 25. Dr. Ripperda purchased
 15 STEC common stock on the Offering and held that stock until at least the first
 16 partial corrective disclosure alleged in the TAC. ECF 335-11 (Ripperda Decl.) at
 17 Ex. A. Therefore, he has standing to assert the alleged Securities Act Claims on
 18 behalf of similarly situated Class members.

19 **1. The Alleged Fraud**

20 16. Plaintiffs and Dr. Ripperda (collectively, "Class Representatives")
 21 contend that from mid-June 2009 through early August 2009, Defendants
 22 knowingly made material misrepresentations and omissions, including:

23 (a) that an agreement signed by STEC with its largest customer,
 24 EMC, in the middle of 2009 for a huge volume of purchases to be made in the
 25 second half of 2009 (the "EMC Agreement") was an ordinary course contract
 26 whose size was determined solely by an increase in the customer's supply
 27 requirements such that a similar volume of purchases by the same customer could
 28 be expected on a regular recurring basis;

1 (b) that purchases by EMC would remain “a significant
2 percentage” of STEC’s total revenues, including in the first quarter of 2010;

3 (c) that, as of August 2009, STEC was expecting the volume of
4 purchases by its other large customers (the “Other OEMs”) to increase during the
5 second half of 2009;

6 (d) that, as part of the expected increase in purchases by the Other
7 OEMs during the second half of 2009, STEC was expecting IBM to transition to a
8 much larger volume of purchases during that period;

9 (e) that, as of September 2009, one or more of the Other OEMs
10 would have been willing and able to replace EMC as the purchaser under the EMC
11 Agreement, or to purchase a similar amount of ZeusIOPS under a similar
12 agreement;

13 (f) that during the 2009 second quarter, STEC’s reported revenue
14 would grow, and then did grow, by an amount that—unknown to investors—had
15 been artificially inflated; and

16 (g) that, as of August 3, 2009, no competition existed for the
17 ZeusIOPS, or was expected to emerge during 2009 or early 2010. ¶ 9.

18 17. Class Representatives allege that Defendants’ misrepresentations and
19 omissions had the effect of doubling the price of STEC’s common stock in mid-
20 2009. ¶ 11.

21 18. The TAC alleges that the Moshayedi Brothers took advantage of that
22 artificial inflation to sell more than 50% of their own stock in the Company
23 through the Offering, for a total of \$267.8 million. ¶ 12.

24 **2. The Partial Corrective Disclosures Alleged in the TAC**

25 19. Only a few weeks after the Offering, a series of partial corrective
26 disclosures began to reveal the falsity of Defendants’ misstatements and omissions,
27 and, in turn, drove down the price of STEC’s stock to below its pre-Class Period
28 level. ¶ 10.

20. First, on September 17, 2009, a major drop in the price of STEC's common stock was allegedly caused by the revelation that an August 3, 2009 statement by Defendant Manouch Moshayedi that there was "no competition" for the ZeusIOPS was false, because such competition was imminent (the "September 17, 2009 Corrective Disclosure"). ¶¶ 193-95.

21. Then, on November 3, 2009, the price of STEC's stock dropped dramatically in the immediate wake of several revelations (collectively, the "November 3, 2009 Corrective Disclosure"):

- (a) Manouch Moshayedi revealed, among other things, that
 - (i) the EMC Agreement was a non-recurring "one-off type of a deal;"
 - (ii) IBM's purchases of ZeusIOPS had "dropped off significantly in the third quarter" and that Sun's purchases of ZeusIOPS were below "normal volumes;" and
 - (iii) none of the Other OEMs could have replaced EMC under terms similar to the EMC Agreement since the Other OEMs were not "selling to any degree yet" and were all "a year behind" EMC in product development, ¶ 173.
- (b) STEC also stated, in its fourth quarter revenue guidance, that purchases of ZeusIOPS in the second half of 2009 by the Other OEMs were not even going to match the level of ZeusIOPS purchases in the first half of 2009, let alone increase. ¶ 144.

22. Finally, on February 23, 2010, Defendant Manouch Moshayedi announced that STEC did not expect any revenue from EMC in the first half of 2010, and that ZeusIOPS sales to the Other OEMs would not recover in the first quarter of 2010 (the "February 23, 2010 Corrective Disclosure"). ¶ 156.⁴ The day

⁴ STEC also disclosed that the Moshayedi Brothers had been subpoenaed by the SEC as part of a formal investigation. ¶¶ 14, 253. The SEC is now prosecuting a civil action against Defendant Manouch Moshayedi for insider trading and some of

(continued)

1 after this new information came to light, STEC's common stock price fell
2 significantly. ¶ 300.

3 **3. The Indemnified Non-Parties**

4 23. The SAC named the Underwriters as defendants and alleged
5 Securities Act Claims against them. ECF 178 ¶¶ 36-40, 334-40, 354-66. The
6 Court dismissed Plaintiffs' Securities Act Claims for lack of standing. ECF 200.

7 24. Since Defendants STEC and the Moshayedi Brothers agreed to
8 indemnify the Underwriters against liabilities relating to the Offering that might
9 arise under the Securities Act, *see* Prospectus at S-29, the TAC does not allege
10 Securities Act Claims against the Underwriters (referred to in the TAC as the
11 "Indemnified Non-Parties"). *See* ¶¶ 37-45.

12 **4. The Competition Claim**

13 25. The CAC alleged false and misleading statements and material
14 omissions related to the competition for ZeusIOPS. Defendants allegedly
15 maintained that STEC had a virtual monopoly in the SSD market and that it faced
16 "no competition" (the "Competition Claim"). ECF 131 ¶ 140. The CAC alleged
17 losses relating to the September 17, 2009 Corrective Disclosure that competition
18 for the ZeusIOPS was imminent. ECF 131-1 ¶¶ 176-79.

19 26. Based on the Court's tentative ruling dismissing the CAC, Plaintiffs
20 elected not to allege the Competition Claim or losses relating to the September 17,
21 2009 Corrective Disclosure in the SAC. *See* ECF 178.

22 27. The TAC reinstates the Competition Claim and losses resulting from
23 several partial disclosures relating to competition for ZeusIOPS, which were
24 included among the corrective disclosures that comprise the September 17, 2009
25 Corrective Disclosure, the November 3, 2009 Corrective Disclosure, and the

26
27 (continued)
28 the same misstatements and omissions alleged in this Action. *See SEC v.*
Moshayedi, No. 8:12-cv-01179-JVS-MLGx (C.D. Cal. filed July 19, 2012).

February 23, 2010 Corrective Disclosure. ¶¶ 71-72, 187-223, 275-78, 298-99, 314-26, 366-71.

5. Other Amendments

28. The TAC includes additional allegations that Defendants made false and misleading statements regarding:

(a) the quality of STEC's products, ¶ 203; and

(b) Defendants' belief that purchases by EMC would remain "a significant percentage" of STEC's total revenue, including into the first quarter of 2010. ¶¶ 76, 280, 301-04, 364-65.

29. The TAC includes additional allegations indicative of Defendant Manouch Moshayedi's scienter:

(a) that STEC was informed by EMC that EMC's demand for ZeusIOPS for the third quarter of 2009 was substantially less than half of what EMC had agreed to purchase for the second half of 2009;

(b) that STEC made a secret side deal with EMC, pursuant to which EMC agreed to increase its purchases for the third quarter of 2009 in exchange for an additional discount on EMC's purchases in the fourth quarter of 2009; and

(c) that on August 3, 2009, STEC issued its third quarter revenue guidance without disclosing the side deal, thereby concealing the fact that EMC's actual third quarter demand had fallen short of the average quarterly demand implied by the volume of the EMC Agreement. ¶ 99.

30. The TAC also includes allegations relating to the timeliness of the Securities Act Claims. ¶¶ 411-27.

1 **III. Plaintiffs Vigorously Prosecuted the Securities Act Claims**

2 **A. Plaintiffs Vigorously Prosecuted the Securities Act Claims**
3 **Through Their Vigorous Prosecution of the Exchange Act Claims**

4 31. The Exchange Act Claims and the Securities Act Claims alleged in
5 this Action are based on the same factual predicate.⁵ Every misstatement or
6 omission alleged under the Securities Act is identical to one or more of the
7 misstatements or omissions alleged under the Exchange Act, *compare* ¶¶ 46-321
8 *with* ¶¶ 356-85—except for the alleged omission, under the Securities Act, to file
9 the EMC Agreement with the SEC, *see* ¶ 101.⁶ Therefore, every effort to discover
10 evidence sufficient to prove the elements of the Exchange Act Claims was,
11 necessarily, an effort to prove the smaller set of elements comprising the related
12 Securities Act Claims.

13 32. Plaintiffs conducted an extensive pre-discovery investigation, which
14 included, *inter alia*,

15 (a) review and analysis of documents filed publicly by Defendants
16 with the SEC;

17 (b) review and analysis of press releases, news articles, and other
18 public statements issued by or concerning Defendants;

19 (c) review and analysis of research reports issued by financial
20 analysts concerning STEC's securities and business;

21 (d) interviews of former STEC employees;

22 (e) interviews of employees and former employees of computer
23 manufacturing companies; and

24
25 ⁵ The Court has previously recognized that the Exchange Act Claims and the
26 Securities Act Claims are based on a "unified course of fraudulent conduct", *see*
ECF 175 at 4, 14, and the "same foundation of facts", ECF 279 at 13.

27 ⁶ The factual details regarding the omission to file the EMC Agreement with the
28 SEC (in violation of the Securities Act) are part of the allegations under the
Exchange Act because the omission to file the EMC Agreement is also evidence of
scienter. *See* ¶¶ 100-12.

1 (f) review and analysis of news articles, media reports, and other
2 publications concerning the computer industry.

3 33. Plaintiffs engaged in significant and meaningful discovery regarding
4 the facts underlying the Action.

5 (a) Co-Lead Counsel served interrogatories and notices to produce
6 documents on Defendants, which resulted in the production by Defendants of over
7 1.8 million pages of documents, including documents previously produced by
8 Defendants to the SEC in connection with the SEC's related investigation of STEC
9 and the Moshayeddis (the "SEC Investigation").

10 (b) Co-Lead Counsel also obtained over 248,000 pages of
11 documents from third parties, including EMC, the Other OEMs, the Underwriters,
12 STEC's auditor PricewaterhouseCoopers LLP ("PwC"), and financial analysts who
13 covered STEC during the Class Period.

14 (c) Co-Lead Counsel deposed more than two dozen witnesses,
15 including Defendants and certain of their employees and various third parties,
16 including employees of EMC and the Other OEMs, as well as financial analysts
17 who covered STEC during the Class Period.⁷

18 34. The Parties exchanged expert reports, with each side retaining
19 multiple experts. Reports were rendered on the subjects of Class Members'
20 damages, the role of financial analysts in the market, the response of analysts to
21 Defendants' misrepresentations and omissions, and Defendants' duties under
22 regulations promulgated by the SEC.⁸

23
24
25
26 ⁷ Pursuant to a stipulation with Defendants, Plaintiffs were allowed to take 30
depositions. ECF 262.

27 ⁸ Depositions of the experts were scheduled to occur, and the Court's deadline
28 for filing summary judgment motions was fast approaching, prior to the scheduled
November 6, 2012 trial date, when the Parties reached a settlement.

1 **B. Plaintiffs Continuously Searched for a Plaintiff with Standing to**
2 **Allege the Securities Act Claims**

3 35. Throughout the prosecution of this Action, including during discovery
4 and depositions, Plaintiffs diligently searched for a representative plaintiff with
5 standing to assert the Securities Act Claims.⁹

6 36. The Court's June 19, 2012 Order stated that to have standing to bring
7 the Securities Act Claims, a plaintiff must have purchased or otherwise acquired
8 STEC stock traceable to the Offering and held that stock until at least the first
9 alleged partial corrective disclosure. ECF 314 at 2.

10 **1. Investigation of Previously Known Plaintiffs**

11 37. None of the plaintiffs who filed the seven initial complaints, the
12 Consolidated Complaint, and/or motions for appointment as lead plaintiff alleged
13 that they purchased or otherwise acquired STEC stock pursuant or traceable to the
14 Offering and held that stock until at least November 4, 2009.¹⁰

15 38. On January 6, 2012, the West Virginia Laborers' Trust Fund ("West
16 Virginia"), represented by BLBG, moved for leave to intervene. ECF 228. West
17 Virginia sought modification of the proposed class definition to exclude the
18 Securities Act Claims. ECF 231 ¶¶ 14-17. In its motion to intervene in this
19 Action, West Virginia asserted that it purchased STEC stock on the Offering but
20 did not assert that it held that stock until at least the first alleged partial corrective
21 disclosure. *See* ECF 333 at 25.

22 (a) West Virginia asserts Securities Act Claims arising from the
23 Offering, against Defendants and the Underwriters on behalf of a putative class of
24

25 ⁹ *See* ECF 279 at 21 (staying Action for 60 days for all purposes other than
26 discovery to permit Plaintiffs to find a class representative with standing); ECF
27 314 at 7 ("Should Plaintiffs discover an adequate Securities Act representative
upon Class notification, the Court may revisit the class certification issue.").

28 ¹⁰ Only one of the initial complaints alleged Securities Act Claims. *See* Class
Action Complaint for Violation of Federal Securities Laws ¶¶ 104-21, *Sakhai v.*
STEC, Inc., No. 8:09-cv-01306-JVS-MLG (C.D. Cal. Nov. 6, 2009) (ECF 1).

investors, in an action in the Superior Court of Orange County styled *West Virginia Laborers' Trust Fund v. STEC, Inc.*, No. 30-2011-0489022-CU-SL-CXC (Cal. Super. Ct. filed July 1, 2011) (the "State Court Action"). *See* ECF 250 at Ex. A.

(b) The State Court Action arises out of the same set of facts as this Action and the complaint in the State Court Action includes substantial portions of the SAC, copied verbatim. ECF 249 at 4-5.

39. After West Virginia moved to intervene, Plaintiffs issued a subpoena to West Virginia seeking production of its trading records with respect to its purchases and sales of STEC stock. *See* ECF 249 at 6-7. West Virginia did not produce its trading records in response to that subpoena.¹¹

2. Mailings, Advertisements, and Other Efforts to Find a Securities Act Plaintiff

40. Plaintiffs issued a document subpoena to each of the four Underwriters to obtain the names and addresses of all persons or entities who purchased on the Offering ("Offering Purchasers"). ECF 307-1 ¶ 2.¹² The Underwriters produced the relevant contact information in mid-April 2012. *Id.* ¶ 5. Immediately thereafter, Co-Lead Counsel sent a letter to each of the 464 Offering Purchasers, of which 212 were individuals and 252 were business entities. *Id.* ¶¶ 6-8. The letters described the Action and stated that Plaintiffs were seeking an investor who purchased STEC stock pursuant or traceable to the Offering. ECF 307-2 at Exs. A, B.¹³

¹¹ On March 7, 2012, the Court issued an Order denying West Virginia's motion to intervene. ECF 279 at 21.

¹² The Underwriters initially refused to produce contact information for the Offering Purchasers, but they agreed to produce that information after Plaintiffs filed a letter motion with Magistrate Judge Goldman. *See* ECF 307-1 ¶¶ 3-4

¹³ Counsel for Plaintiffs retained Diane Karpman, Esq. of Karpman & Associates to ensure that the letters complied with all California ethics rules and restrictions. Karpman & Associates is one of the premiere legal ethics firms in California and exclusively serves the legal profession. Ms. Karpman reviewed, revised, and approved the letters described in paragraph 40.

1 (a) One of the 252 business entities was Jeffries & Company, Inc.,
2 now known as Jeffries Group, Inc. (“Jeffries”). A Jeffries broker at the Harborside
3 Financial Center in Jersey City, New Jersey, purchased STEC common stock on
4 the Offering for a limited partnership client. ECF 307-1 ¶ 9.

5 (b) In response to the letter described in paragraph 40 *supra*, this
6 Jeffries office produced the names and addresses of 665 clients who purchased
7 STEC common stock during the Class Period, but not necessarily on the Offering.
8 In an abundance of caution, Co-Lead Counsel sent to each of these 665 individuals
9 or entities a letter that was identical in all material respects to the letter described in
10 paragraph 40 *supra*. *See id.*

11 41. On Monday, April 23, 2012, Co-Lead Counsel caused an
12 advertisement to be placed in *Investor’s Business Daily*, which has a total audience
13 of 401,000 and a total distribution on Monday of 162,758. ECF 307-1 ¶¶ 11-12.
14 The advertisement described the Action and stated that Plaintiffs were seeking an
15 investor who purchased STEC stock pursuant or traceable to the Offering. ECF
16 307-2 at Ex. D.

17 42. On May 10, 2012, Plaintiffs caused the same advertisement to be
18 placed in the Eastern Edition of *The Wall Street Journal*, which has a total
19 circulation of 733,611. *See* ECF 307-1 ¶ 13; ECF 307-2 at Ex. G.¹⁴ The Eastern
20 Edition of *The Wall Street Journal* was selected because an analysis of the
21 geographical location of the 464 Offering Purchasers revealed that the vast
22 majority of them resided within the circulation area of the Eastern Edition. ECF
23 307-1 ¶ 13.

24 43. As a result of the mailings and advertisements, Co-Lead Counsel was
25 contacted by 23 investors, none of whom had standing to bring the Securities Act
26

27 ¹⁴ Ms. Karpman also reviewed, revised, and approved the text of the
28 advertisements described in paragraphs 41-42 prior to their publication.

1 Claims, as alleged in the SAC. *Id.* ¶ 15. Three of the 23 investors did not purchase
2 on the Offering. *Id.* ¶ 17. The other 20 investors purchased STEC stock on the
3 Offering but sold that stock prior to the first partial corrective disclosure alleged in
4 the SAC. *Id.* ¶ 16. Dr. Ripperda was among the 20 Offering Purchasers who
5 contacted Co-Lead Counsel in response to the mailings and advertisements.

6 44. Finally, Co-Lead Counsel sought assistance from more than ten law
7 firms, including BLBG (counsel for Rashtchi, Ovitt, and West Virginia), in
8 identifying an adequate class representative. None of these attorneys were able to
9 refer an investor who had standing to assert the Securities Act Claims, as alleged in
10 the SAC. *Id.* ¶ 18.

11 **C. Plaintiffs Vigorously Prosecuted the Inflated Revenues Claims**

12 45. Plaintiffs reviewed publicly available documents and documents
13 produced in discovery by Defendants and various third parties, including EMC and
14 the Other OEMs, relating to, *inter alia*, STEC's reported revenue; STEC's revenue
15 guidance; STEC's anticipated, forecast, or estimated sales of ZeusIOPS to its
16 customers; STEC's anticipated, forecast, or estimated revenue from ZeusIOPS
17 sales; any decline in STEC's ZeusIOPS sales, whether in total, or in regard to any
18 specific customer; customers' projected or actual requirements of ZeusIOPS;
19 ZeusIOPS inventory held by customers; communications between STEC and its
20 customers regarding ZeusIOPS; customers' production of systems incorporating
21 ZeusIOPS; STEC's purchase of inventory; any discount STEC gave to a customer
22 in return for such customer advancing purchases; and research reports published by
23 financial analysts concerning STEC's sales and revenues.

24 46. Plaintiffs also reviewed documents produced by PwC, STEC's
25 auditor, relating to the procedures applied, work performed, evidence obtained, and
26 conclusions reached in the auditing engagement ("workpapers") concerning, *inter*
27 *alia*, PwC's quarterly review of STEC's 2009 second quarter revenue and PwC's
28 interim audit testing concerning STEC's 2009 second quarter revenue.

1 47. Co-Lead Counsel questioned numerous deponents about Defendants'
2 alleged inflation of STEC's reported revenues for the second quarter of 2009:

3 (a) Defendant Cook and Michael Higa ("Higa"), Senior Vice
4 President of Finance at STEC, were questioned about STEC's revenue recognition
5 policies. Raymond Cook Dep. Tr. at 159; Michael Higa Dep. Tr. at 17-23.¹⁵

6 (b) Christopher Casella, Manager of Global Supply Chain at EMC,
7 was questioned about return material authorization and negative revenue
8 recognition. Christopher Casella Dep. Tr. at 111-14.

9 (c) Co-Lead Counsel questioned numerous deponents about
10 whether Defendants engaged in channel stuffing in order to inflate STEC's
11 reported revenues:

12 (i) Defendant Manouch Moshayedi and Cindy Reese
13 ("Reese"), Senior Vice President of Sun, were questioned about Manouch
14 Moshayedi's insistence that Sun purchase more STEC products than it actually
15 needed. *See* Manouch Moshayedi Dep. Tr. at 192-94; Cindy Reese Dep. Tr. at 33-
16 35.

17 (ii) William Fahey ("Fahey"), Director of Sales at STEC,
18 was questioned about excess inventory at EMC and shipping products to EMC at a
19 time when EMC did not want additional products. William Fahey Dep. Tr. at 143-
20 60, 201-04.

21 (iii) Anthony Anvari ("Anvari"), Vice President of Sales at
22 STEC, was questioned about Manouch Moshayedi's instruction to ship everything he
23 could in the second quarter of 2009. Anthony Anvari Dep. Tr. at 152-55.

24
25
26
27 ¹⁵ Lead Plaintiff is not filing the deposition transcripts cited herein because they
28 are generally designated confidential. *See* ECF 224; ECF 225.

1 (iv) Higa was questioned about timing shipments according
2 to internal revenue targets and incentives to sales employees. Michael Higa Dep.
3 Tr. at 33-40.

4 (v) Thomas Vogtman (“Vogtman”), Director of Program
5 Management – Japan Sales at STEC, was questioned about internal pressure to
6 ship products. Thomas Vogtman Dep. Tr. at 101-02.

7 (vi) Mark Pridgen (“Pridgen”), Strategic Procurement
8 Manager of HP, was questioned about STEC’s insistence that HP increase
9 volumes; HP’s inventory of and demand for ZeusIOPS; pulling forward July
10 purchase orders into June; and STEC’s refusal to push out purchase orders. Mark
11 Pridgen Dep. Tr. at 74-77, 93-118.

12 (vii) Michael Desens, Vice President of System and Power
13 Development at IBM, was questioned about the timing of shipments from STEC
14 and pushing out orders. Michael Desens Dep. Tr. at 40-41.

15 (viii) Lorenzo Salhi (“Salhi”), former Director of Sales for
16 OEMs at STEC, was questioned about, *inter alia*, STEC sales employees inflating
17 sales and revenue figures; pulling purchase orders from future quarters into earlier
18 quarters; STEC’s refusal to cancel orders; excess inventory held by HP and
19 STEC’s attempts to advance shipments to HP; offering discounts to dissuade
20 customers from cancelling orders or to convince customers to take shipments early;
21 and the timing of sales to Cisco. Lorenzo Salhi Dep. Tr. at 87, 163, 151-59, 185-
22 89, 193-94.

23 (ix) Kevin Vassily (“Vassily”), Senior Research Analyst at
24 Pacific Crest, was asked about STEC’s allegedly false guidance and financial
25 reporting and whether STEC engaged in channel stuffing to increase its revenues.
26 Kevin Vassily Dep. Tr. at 263, 270-74.

1 (x) Michael Crawford (“Crawford”), Director of Research at
2 B. Riley & Co., was asked about channel stuffing and whether STEC engaged in
3 channel stuffing. Michael Crawford Dep. Tr. at 117-18, 215.

4 (d) Co-Lead Counsel also questioned several deponents about
5 whether Defendants knowingly shipped defective products in order to inflate
6 STEC’s reported revenues:

7 (i) Defendant Mark Moshayedi was questioned about HP
8 issuing a stop shipment order because it had received defective products. Mark
9 Moshayedi Dep. Tr. at 128-29.

10 (ii) Pridgen was questioned about HP returning defective and
11 unwanted products to STEC and STEC improperly charging HP for shipments.
12 Mark Pridgen Dep. Tr. at 48-49, 57.

13 (iii) Vogtman was questioned about shipping defective
14 products to Hitachi. Thomas Vogtman Dep. Tr. at 102-21.

15 (iv) Salhi was questioned about intentionally shipping
16 defective products. Lorenzo Salhi Dep. Tr. at 173-74.

17 48. Co-Lead Counsel reviewed the transcripts of depositions taken by the
18 SEC, including the deposition of Defendant Mark Moshayedi, who was questioned
19 by the SEC about STEC’s revenue recognition policies and moving EMC’s buffer
20 inventory to fill revenue gaps. Mark Moshayedi SEC Dep. Tr. at 34, 192-94.

21 49. Co-Lead Counsel attended the deposition of CW2, a marketing
22 employee for one of STEC’s customers, who was questioned by Defendants about
23 STEC shipping empty boxes, defective products, and products that were not
24 ordered. CW2 Dep. Tr. at 43-45, 73.

25 50. Co-Lead Counsel attended the deposition of CW3, a former sales
26 employee at STEC, who was questioned by Defendants about shipping defective
27 products; incorrectly reporting product failures to HP; shipping products to HP
28

1 despite a stop order; and moving sales into an earlier quarter to inflate sales
2 numbers. CW3 Dep. Tr. at 29-39, 43, 48-54.

3 **D. Plaintiffs Vigorously Prosecuted the Competition Claim**

4 51. Plaintiffs reviewed publicly available documents and documents
5 produced in discovery by Defendants and various third parties, including EMC, the
6 Other OEMs, and financial analysts who covered STEC during the Class Period,
7 relating to, *inter alia*, actual and projected competition for STEC's ZeusIOPS.

8 52. Plaintiffs reviewed documents relating to the September 17, 2009
9 research report issued by Betsy Van Hees ("Van Hees"), a Publishing Analyst at
10 Wedbush (the "Wedbush Report"), which asserted that there would be competition
11 for STEC's ZeusIOPS by the fourth quarter of 2009. *See* ECF 335-7.

12 53. Co-Lead Counsel questioned numerous deponents about competition
13 for STEC's ZeusIOPS and investigated, *e.g.*, whether EMC was planning not to
14 renew the EMC Agreement because it expected to start purchasing more cheaply
15 from STEC's competitors and whether STEC knew that and whether the Other
16 OEMs were refraining from purchasing from STEC because they were expecting
17 competition to emerge and force STEC to lower its pricing. Several analysts were
18 also questioned about whether the issue of developing competition was important
19 to them and what they thought ultimately was disclosed about competition. Both
20 Plaintiffs and Defendants sought to elicit information about STEC's competition to
21 support their side of the case.

22 (a) Defendant Manouch Moshayedi was questioned about, *inter*
23 *alia*, competitors selling enterprise SSDs in 2009; the announcement in 2009 by
24 Hitachi and Intel, Inc. of plans to jointly develop enterprise SSD products, with the
25 first shipments expected in early 2010; whether in 2009 other companies
26 announced plans to enter the market; whether in 2009 EMC expected STEC to
27 have competition; exclusivity agreements with customers and whether they were
28 necessary if STEC was the only supplier; EMC's purchases from competitors in

1 2010 and competitors' pricing for EMC; EMC's qualification of competitors'
2 products; and potential competition from Samsung. Manouch Moshayedi Dep. Tr.
3 at 81, 84-88, 99, 103-104, 204-206, 230-31, 302-306.

4 (b) Defendant Mark Moshayedi was questioned about competition
5 for STEC's SSDs in 2007; competitive products first manufactured by Samsung
6 and Hitachi in the second half of 2010; EMC's qualification of Samsung as a
7 competitor; Seagate's announced plans to release an enterprise SSD; the
8 announcement in 2009 by Hitachi and Intel, Inc. of plans to jointly develop
9 enterprise SSD products, with the first shipments expected in early 2010; and
10 collaboration between Sun and Micron to develop enterprise SSDs. Mark
11 Moshayedi Dep. Tr. at 19-20, 137-38, 140-42.

12 (c) Defendant Cook was questioned about competition for STEC's
13 ZeusIOPS in 2009; the Wedbush Report and other analyst reports in 2009
14 regarding competition in the SSD market; and pressure on STEC's stock because
15 of competition. Raymond Cook Dep. Tr. at 31-32, 132-36.

16 (d) Fahey was questioned about competition for STEC's ZeusIOPS
17 in 2008; other SSD suppliers offering price quotes to EMC for the 2011 time-
18 frame; Samsung's pricing and Samsung's SSDs expected to be qualified in 2010;
19 and competition from Sandforce and Hitachi. William Fahey Dep. Tr. at 123-25,
20 130-31, 136-38.

21 (e) Anvari and Vogtman were also questioned about competition
22 for STEC's ZeusIOPS. Anthony Anvari Dep. Tr. at 146; Thomas Vogtman Dep.
23 Tr. at 24-25.

24 (f) Timothy Smith, Senior Director at EMC, was questioned about
25 STEC's ZeusIOPS and the development and availability to EMC of competitive
26 products; and STEC's pricing prior to EMC's qualification of a competitor.
27 Timothy Smith Dep. Tr. at 97-100, 181.

28

1 (g) Reese was questioned about STEC's pricing and Sun's interest
2 in various other suppliers as potential replacements for STEC. Cindy Reese Dep.
3 Tr. at 17-19.

4 (h) Pridgen was questioned about HP's purchases of SSDs from
5 Samsung. Mark Pridgen Dep. Tr. at 70.

6 (i) Christopher Casella, Manager of Global Supply Chain for SSDs
7 at EMC, was questioned about conversations around January 2010 with
8 competitors or potential competitors of STEC about pricing. Christopher Casella
9 Dep. Tr. at 116-17.

10 (j) Van Hees was questioned about the EMC Agreement and
11 protection for STEC from its competitors; her industry checks regarding
12 competition; the Wedbush Report; competition from Samsung; and her concerns
13 that the competitive landscape would likely pose challenges to STEC's earnings
14 and revenues in the second half of 2010. Van Hees Dep. Tr. at 18-19, 80-82, 93-
15 95, 125-28. During that deposition, Van Hees was also questioned by Defendants
16 about her industry expectations in the middle of 2009 and in 2010; and statements
17 by EMC that it was actively working with competitors and looking for a second
18 source for enterprise SSDs. *Id.* at 203-207.

19 (k) Gary Hsueh, Executive Director at Oppenheimer, discussed
20 STEC's competition in response to questions asked by Co-Lead Counsel at various
21 points during his deposition. Gary Hsueh Dep. Tr. at 102-103, 112-13, 131. He
22 was also questioned by Defendants about his suspicion or concern about intensified
23 competition or the possibility that EMC might be qualifying a second source for
24 SSDs and whether EMC ever qualified a second source. *Id.* at 162-63, 198-99.

25 (l) Vassily was questioned about the competitive pressures on
26 STEC and a setback at Seagate, one of STEC's potential competitors. Kevin
27 Vassily Dep. Tr. at 55-56, 73, 78-79. During that deposition, Vassily was also
28 questioned by Defendants about competition in 2009 and 2010 for STEC's

1 ZeusIOPS; his statement in an analyst report that, as of June 2009, legitimate
2 competition in the enterprise storage space was still at least three to four quarters
3 away; sources of information published in his analyst reports regarding STEC's
4 competition; rumors of impending competition around November 2009; and the
5 competitive landscape as of February 24, 2010. *Id.* at 195-203, 252-55.

6 (m) Aaron Rakers ("Rakers"), Managing Director and Senior
7 Analyst at Stifel Nicolaus, was questioned about whether he had an understanding
8 that the EMC Agreement would continue and EMC potentially sourcing SSDs
9 from a company other than STEC in the future; statements in his analyst reports
10 that, as of July 2009, his checks continued to suggest that there would be no viable
11 competitor to STEC in the market for enterprise SSDs until mid-2010; the sources
12 of information published in his analyst reports regarding STEC's competition;
13 EMC's interest in other SSD suppliers. Aaron Rakers Dep. Tr. at 49-54, 75-76.
14 During that deposition, Rakers was also questioned by Defendants about
15 conversations with EMC regarding STEC's competitive position. *Id.* at 164.

16 (n) Vijay Rakesh ("Rakesh"), Think Equity's Analyst covering
17 semiconductors, was questioned about STEC's competition in September 2009 and
18 November 2009; the potential for competition for STEC's ZeusIOPS; his estimate
19 that competition would come in early 2010; and his conversations with Defendant
20 Manouch Moshayedi regarding the competitive landscape. Vijay Rakesh Dep. Tr.
21 at 88-89, 123-27, 130, 136. During that deposition, Rakesh was also questioned by
22 Defendants about a statement in his March 13, 2009 analyst report that aggressive
23 competition for SSDs was on the horizon; analyst reports citing competition as a
24 risk to STEC in his analyst reports; and STEC's competition at or around the time
25 of the Offering. *Id.* at 147-49, 154, 172-73, 182, 199-201.

26 (o) Crawford was questioned about competition as a risk factor
27 STEC faced. Michael Crawford Dep. Tr. at 239. During that deposition, Crawford
28 was also questioned by Defendants about the risk that prices and margins would be

1 affected when other vendors emerged as competitors and investor concern
2 regarding when and whether a competitor might emerge. *Id.* at 179-80, 184-85.

3 (p) Jeffrey Schreiner, Senior Research Analyst at Capstone, was
4 questioned about the EMC Agreement and protection for STEC from its
5 competitors, as well as the competitive landscape in 2009. Jeffrey Schreiner Dep.
6 Tr. at 61-62, 95-97, 116-17.

7 54. Co-Lead Counsel attended the deposition of Steven L. Henning,
8 Ph.D., CPA, an expert retained by Lead Plaintiffs, who was questioned by
9 Defendants about whether he was aware of any suppliers of enterprise SSDs in
10 2009 other than STEC and when STEC's competitors were qualified with EMC.
11 Steven Henning Dep. Tr. at 130-32.

12 55. Co-Lead Counsel reviewed the transcripts of depositions taken by the
13 SEC, during which several deponents were questioned about STEC's competition:

14 (a) Defendant Manouch Moshayedi was asked by the SEC about
15 competition around the time of the EMC Agreement and in 2010; communications
16 with EMC regarding competitors and competitive pricing; and what Fahey and
17 Chris Coeney, a field application engineer, both of whom were at the EMC factory,
18 told him regarding EMC's alternatives to STEC's ZeusIOPS. Manouch
19 Moshayedi SEC Dep. Tr. at 251-57, 261, 264.

20 (b) Defendant Mark Moshayedi was asked by the SEC about
21 communications in 2009 and 2010 with EMC regarding competitors and
22 competitive pricing. Mark Moshayedi SEC Dep. Tr. at 142-44, 207-08.

23 (c) Masoud ("Mike") Moshayedi, who co-founded STEC with his
24 brothers Manouch and Mark Moshayedi and was President of the Company prior
25 to his retirement in 2007, was questioned by the SEC about the Wedbush Report
26 and what Manouch and Mark Moshayedi told him regarding STEC's competition.
27 Mike Moshayedi SEC Dep. Tr. at 130-31, 136-37.

28

1 (d) Fahey was questioned by the SEC regarding when he heard
2 about competition from EMC and whether in 2010 EMC would qualify other
3 suppliers. William Fahey SEC Dep. Tr. at 89-92.

4 56. Co-Lead Counsel attended the deposition of Roberto Basilio, Vice
5 President of Hardware Product Management at Hitachi, who was questioned by
6 Defendants about whether in 2009 Hitachi procured SSDs from manufacturers
7 other than STEC and when other suppliers became available to Hitachi. Robert
8 Basilio Dep. Tr. at 24-28.

9 **E. Plaintiffs Vigorously Prosecuted the Securities Act Claims**
10 **Against the Underwriters**

11 57. The Offering was underwritten by the four Underwriters: J.P. Morgan
12 Securities, Deutsche Bank Securities, Barclays Capital, and Oppenheimer.
13 Prospectus Supplement at S-27 (Aug. 7, 2009). The lead underwriters (a/k/a “joint
14 bookrunners”) of the Offering were J.P. Morgan Securities and Deutsche Bank
15 Securities.

16 58. The Underwriters were named as defendants in both the CAC and the
17 SAC. However, as noted, the Court dismissed the class claims against the
18 Underwriters on June 17, 2011.

19 59. On November 9, 2011, Plaintiffs issued subpoenas out of the Southern
20 District of New York to each of the Underwriters (the “Underwriter Subpoenas”).
21 The Underwriter Subpoenas sought the production of documents relating to, *inter*
22 *alia*, the due diligence performed by the Underwriters in connection with the
23 Offering, all communications with STEC personnel regarding the Offering, and the
24 identities of all Offering Purchasers.¹⁶

25
26 ¹⁶ Plaintiffs issued supplemental subpoenas out of the Central District of
27 California to each of the Underwriters seeking the identities of the Offering
28 Purchasers. After a discovery dispute concerning the production of the Offering
Purchasers’ addresses, which Plaintiffs raised with Magistrate Judge Goldman on
March 28, 2012, the Underwriters eventually produced that information.

1 60. After protracted negotiations concerning the scope of discovery, lead
2 underwriters J.P. Morgan Securities and Deutsche Bank Securities produced to
3 Plaintiffs a total of 668,105 pages of documents responsive to the Underwriter
4 Subpoenas. In addition, the other two underwriters produced a total of 63,876
5 pages of documents.

6 61. The Underwriters' document productions included all of the due
7 diligence documents that they had produced to the SEC in connection with the
8 SEC Investigation. Significantly, the Underwriters' production included the
9 "Commitment Committee" memorandum that each firm drafted in connection with
10 the Offering. The Commitment Committee memoranda described the due
11 diligence procedures performed by each Underwriter and contained each
12 Underwriter's rationale for participating in the Offering—including a detailed
13 analysis of STEC's financial position, competitive position, and business
14 prospects—based on public information, STEC's internal documents, and
15 interviews with STEC's managers, auditors, and customers.

16 62. In addition, on April 2, 2012, Plaintiffs deposed Sherri Scribner
17 ("Scribner"), a financial analyst at Deutsche Bank Securities who was part of the
18 Deutsche Bank Securities engagement team for the Offering, and who
19 subsequently initiated coverage of STEC as a securities analyst on August 16,
20 2009.¹⁷ Scribner was questioned about, *inter alia*, Deutsche Bank Securities'
21 Commitment Committee memorandum; due diligence with respect to the Offering;
22 Scribner's involvement with the Offering; and Scribner's interaction with another
23 analyst at Deutsche Bank Securities who published research reports on STEC prior
24 to the Offering. Sherri Scribner Dep. Tr. at 22-23, 29-36, 44-57, 62-81. During
25

26 ¹⁷ BLBG wrongly asserted in its opposition at p. 9: "Lead Plaintiff apparently
27 did not even depose any of the four investment banks that acted as underwriters
28 with respect to the August 11, 2009 offering (the "Offering"), upon which the
Securities Act Claims are based."

1 that deposition, Scribner was also questioned by Defendants about due diligence
2 for the Offering. *Id.* at 247-52, 278-79, 295.

3 63. It is Co-Lead Counsel's understanding that, pursuant to the
4 Underwriting Agreement, the Underwriters are being indemnified by STEC with
5 respect to this Action.

6 **F. Settlement**

7 **1. Negotiations Among the Settling Parties**

8 64. The Settlement resulted from extensive negotiations that were
9 undertaken over the course of nearly nine months with the assistance of the
10 Honorable Layn R. Philips, a former Federal Judge, who was retained by the
11 Parties as a mediator.

12 65. In the fall of 2011, Co-Lead Counsel and counsel for the STEC
13 Defendants (the "STEC Defendants' Counsel"), contacted Judge Phillips to request
14 his assistance in mediating this case. After ensuring that no conflicts existed,
15 Judge Phillips agreed to do so.

16 66. The Parties first met with Judge Philips for a formal, full-day
17 mediation session on January 5, 2012. In advance of this session, Co-Lead
18 Counsel and the STEC Defendants' Counsel submitted detailed, comprehensive
19 mediation statements. Along with Co-Lead Counsel, a representative of Lead
20 Plaintiff (a Deputy Attorney General) attended and actively participated in the
21 mediation session.

22 67. During the January 2012 mediation session, Judge Phillips engaged in
23 numerous discussions with Co-Lead Counsel and the STEC Defendants' Counsel
24 in an effort to find common ground between the parties' respective positions.
25 However, although the January 2012 mediation session narrowed some of the
26 Parties' differences, it did not lead to a resolution.

1 68. Thereafter, the Parties ceased all mediation discussions, deciding to
2 pursue discovery. During this time, Judge Phillips was generally kept apprised of
3 the litigation, including the progress of discovery.

4 69. Then, in May 2012, Co-Lead Counsel and STEC Defendants' Counsel
5 agreed that further formal mediation in the wake of the completion of extensive
6 fact discovery might prove fruitful. Therefore, they scheduled a formal, full-day
7 mediation with Judge Phillips for July 30, 2012. In advance of this session, Co-
8 Lead Counsel and STEC Defendants' Counsel submitted detailed, comprehensive
9 mediation statements informed by their extensive mutual discovery. The July 2012
10 mediation session was also attended by client representatives from the parties,
11 including a Deputy Attorney General from New Jersey and the General Counsel of
12 STEC, who were actively involved in the discussions.

13 70. Although the mediation in July 2012 was productive in terms of
14 focusing the areas of dispute and narrowing the settlement range, the Parties were
15 not able to reach an agreement.

16 71. In August 2012, Dr. Ripperda agreed to serve as a class representative
17 on behalf of investors who acquired STEC stock pursuant or traceable to the
18 Offering and held that stock until at least the September 17, 2009 Corrective
19 Disclosure, the first partial corrective disclosure alleged in the TAC.¹⁸

20 72. Co-Lead Counsel referred Dr. Ripperda to Thomas Bienert, Jr.
21 ("Bienert") of Bienert Miller & Katzman and Robert S. Green ("Green"), of Green
22 & Noblin, P.C. After Dr. Ripperda retained them as counsel, Bienert and Green
23 reviewed the pleadings, the discovery record, and other aspects of the Action prior
24
25

26 ¹⁸ Dr. Ripperda initially contacted Co-Lead Counsel on April 24, 2012 to discuss
27 the Action. At that time, Dr. Ripperda provided to Co-Lead Counsel his trading
28 records, which show that he had purchased STEC common stock on the Offering
but had sold that stock prior to November 4, 2009 and, thus, did not have standing
to assert the Securities Act Claims alleged in the SAC.

1 to joining the Parties in settlement negotiations. *See* Ex. B (Green Decl.) ¶¶ 7-9;
2 Ex. C (Bienert Decl.) ¶ 6.

3 73. On September 5, 2012, the Parties met in New York for a third and
4 final mediation session with Judge Philips.¹⁹ The mediation was attended by
5 counsel for the Parties, an Assistant Attorney General from New Jersey, the
6 General Counsel of STEC, and counsel for Dr. Mark Ripperda.²⁰ Bienert and
7 Green and actively participated in the negotiations. Ex. B ¶ 11; *see also* Ex. C ¶ 7.
8 At the close of the third day of mediation, the Parties had narrowed their areas of
9 dispute, but there was no agreement reached.

10 74. After additional discussions by telephone over the next two days, the
11 Parties, including Dr. Ripperda, reached agreement and signed a Memorandum of
12 Understanding on September 11, 2012, which set forth, subject to the preparation
13 of formal stipulations of settlement, the material terms and conditions of the
14 combined \$35.75 million settlement. The Settlement Agreement was executed on
15 October 5, 2012. ECF 328-1.

16 **2. Negotiations Between Class Representatives' Counsel**

17 75. In October 2012, Co-Lead Counsel and counsel for Dr. Ripperda
18 participated in additional negotiations with the assistance of Judge Philips
19 regarding the allocation of the Settlement between class members with only
20 Exchange Act Claims and those with both Exchange Act and Securities Act
21 Claims.

22 76. On October 22, 2012, Judge Philips held a conference call solely on
23 the issue of allocation, at which time Lead Plaintiff and Co-Lead Counsel accepted
24

25 ¹⁹ Bernie Schneider, a colleague of Judge Philips, began the mediation. Judge
Philips arrived later and jointly conducted the mediation with Mr. Schneider.

26 ²⁰ Counsel requested that Dr. Ripperda attend the mediation. However, because
27 Dr. Ripperda is an Emergency Room physician in Arizona, it was not possible for
28 him to arrange his schedule to attend in person. Instead, he communicated with
counsel via e-mail and was available during the mediation by telephone. Ex. D
(Ripperda Declaration) at 7.

1 the allocation proposed by Dr. Ripperda and his counsel, whereby class members
2 with Securities Act Claims would receive a 25% premium on their recovery.

3 77. The loss causation and damages expert retained by Lead Plaintiff to
4 assist in creating the Plan of Allocation, Professor John D. Finnerty, has opined
5 that a premium of 25% to Securities Act Claims, as compared to Section 10(b)
6 claims, is reasonable. *See* Ex. E.

7 **IV. Exhibits**

8 78. Attached hereto are true and correct copies of the following exhibits:

9 (a) Declaration of Samuel S. Cornish in Support of Final Approval
10 of Settlement, and Reimbursement of Lead Plaintiff's Reasonable Costs and
11 Expenses Relating to Its Representation of the Class (Ex. A);

12 (b) Declaration of Robert S. Green in Support of Amended motion
13 for Preliminary Approval of Settlement (Ex. B);

14 (c) Declaration of Thomas H. Bienert, Jr., in Support of Amended
15 Motion for Preliminary Approval of Settlement (Ex. C);

16 (d) Second Declaration of Mark V. Ripperda in Support of
17 Amended Motion for Preliminary Approval of Settlement (Ex. D);

18 (e) Declaration of John D. Finnerty, Ph.D. (Ex. E);

19 (f) Notice of Pendency and Proposed Settlement of Class Action
20 and Fairness Hearing, *In re Countrywide Fin. Corp. Sec. Litig.*, No. CV07-05295
21 MRP (MANx) (C.D. Cal.) (Ex. F);

22 (g) Notice of Pendency of Class Action and Proposed Settlement,
23 Settlement Fairness Hearing and Motion for Attorneys' Fees and Reimbursement
24 of Litigation Expenses, *In re Rait Fin. Trust Sec. Litig.*, No. 2:07-cv-03148-LDD
25 (E.D. Pa.) (Ex. G);

26 (h) Notice of Pendency and Partial Settlement of Class Action, *In*
27 *re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 01-cv-1541-REB-CBS (D. Col.) (Ex. H);

28

1 (i) Notice of Pendency and Settlement of Class Action, *Schwartz v.*
2 *TXU Corp.*, No. 02-CV-2243-K (N.D. Tex.) (Ex. I);

3 (j) Notice of Proposed Class Action Settlement, Right to
4 Exclusion, and Hearing, *In re Waste Mgmt., Inc. Sec. Litig.*, No. H-99-2183 (MH)
5 (S.D. Tex.) (Ex. J);

6 (k) Notice of Proposed Settlement, Motion for Attorneys' Fees and
7 Fairness Hearing, *In re Tyco Int'l, Ltd. Sec. Litig.*, No. 02-1335-PB (D.N.H.) (Ex.
8 K);

9 (l) Notice of Pendency of Class Action and Proposed Settlement,
10 Settlement Fairness Hearing, and Motion for Attorneys' Fees and Reimbursement
11 of Litigation Expenses, *In re Isolagen, Inc. Sec. & Derivative Litig.*, No. 06-md-
12 01741 (E.D. Pa. 2008) (Ex. L);

13 (m) Notice of (1) Pendency of Class Action and (2) Hearing on
14 Proposed Settlement and Attorneys' Fee Petition and Right to Share in Net
15 Settlement Fund, *In re SFBC Int'l Inc. Sec. & Derivative Litig.*, No. 2:06-cv-
16 000165-SRC (D.N.J. 2007) (Ex. M); and

17 (n) Order Denying Plaintiffs' Motion for Class Certification,
18 *Schwartz v. Lights of Am., Inc.*, No. CV 11-01712 JVS(MLGx) (C.D. Cal. June 15,
19 2012) (Ex. N.).

20
21 I hereby declare under penalty of perjury that the foregoing is true and correct.
22 Executed at New York, New York, on December 14, 2012.

23
24 /s/ Thomas A. Dubbs

25 Thomas A. Dubbs (*Pro Hac Vice*)
26
27
28